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Remarks:

Amendments to the claims:

In this paper, claim 9 has been amended to address the typographical error noted by the Examiner. New claims 19 -- 23 are presented.

Regarding the rejection of claims 1, 7-13 and 17 under 35 USC 102(b) as allegedly being anticipated by WO 01/78657 to McManus et al. (hereinafter "McManus"):

Applicants traverse the Examiner's rejection of claims 1-3 and 7-17 as allegedly being anticipated by McManus.

The Examiner asserts that McManus discloses each and every feature recited in claims 1-3 and 7-17. Applicants respectfully disagree with this assertion.

Nowhere does McManus teach or suggest an encapsulated fragrance composition which either comprises or consisting essentially of a fragrance material encapsulated in a liquid crystal-forming material containing at least one fatty alcohol having at least 22 carbon atoms, wherein the liquid crystal-forming material additionally contains a reinforcing material as required by presently amended claim 1 or as required by new claim 20, which now limits the reinforcing material to be used to one or more of:

- "a) crystalline or partially crystalline polyethylene having a molecular weight less than 10,000 g/mol;
- b) poly(ethylene-b-ethylene oxide) copolymers having an ethylene oxide level of lower than 80% and a molecular weight lower than 2500 g/mol;
- c) alginates optionally admixed with amphiphilic modified starches or dextrans having a 1% solution viscosity lower than 50 mPas when measured in water at 20 °C with a Brookfield viscometer having a spindle number 1 and operating at 60 rpm; and,
- d) sodium silicate combined with calcium, in which sodium silicate is added to the liquid-crystal-forming material and the cross-linking reaction is carried out in situ by post-addition of calcium chloride after the formation of the liquid-crystalline phase."

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Additionally, the present claim also requires that the selected reinforcing material be one which "...causes the encapsulated fragrance composition to exhibit a plateau region of the store elastic modulus higher than 10^3 Pascal at 25°C... ". Such features are not disclosed (or for that matter, even remotely suggested) by McManus. Instead, McManus is substantially directed to making skin-moisturizing compositions which necessarily comprise LCGN emulsions, which includes water, at least one cationic emulsifier, at least one low HLB emulsifier and at least one emollient (see page 4, lines 9-15 of McManus).

The applicant points out that McManus' invention (see McManus, at pages 2 -3) is directed to:

More particularly, the present invention is directed to personal skin

30 moisturizer compositions comprising water, at least one cationic emulsifier (as a primary emulsifier) and at least one low hydrophilic lipophilic balance (HLB) emulsifier having an HLB of 1 to about 6 or less (as a co-emulsifier or secondary emulsifier) to form an LCGN-based emulsion, and, optionally, one or more emollients, with oil phase emollients being preferred. Thus, in accordance with the present invention, the one or more cationic emulsifiers and the one or more low HLB co-emulsifiers which form the LCGN-based emulsion system can deliver one

5 or more cosmetically acceptable emollients to the user, resulting in a skin care product having improved moisturization, faster absorption into the skin, less greasiness, less waxiness, and fewer unpleasant aesthetic characteristics versus traditional compositions that are currently available. These attributes of the compositions of the present invention provide improved and advantageous

10 organoleptic properties to the final skin care products of the invention. By organoleptics is meant, in general, sensory attributes, such as tactile thickness, spreadability, absorbancy, smell, feel, tackiness, greasiness, waxiness and drag.

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In accordance with the present invention, the compositions more specifically comprise water, at least one cationic emulsifier (e.g., as a primary
15 emulsifier), at least one low HLB emulsifier having an HLB of 1 to about 6 or less (e.g., as a co-emulsifier or secondary emulsifier) forming an LCGN-based emulsion system, and at least one emollient, or a component of the composition having emollient properties. The ratio of cationic emulsifiers to low HLB emulsifiers is preferably about 1:1 to 1:25 in the compositions described herein.

It is clear from an even cursory review of the foregoing that the *essential constituents* of McManus' compositions, those necessary to form his "LCGN" system are (i) at least one cationic emulsifier with (ii) his secondary emulsifier and (iii) water. This defines a "system" of constituents at the core of the McManus compositions, and which a skilled artisan would not find any motivation to modify in alter in any way, as otherwise it would be expected that the recited LCGN-based emulsion could not be formed.

In contrast thereto, as is recited by the applicant in the instant patent application, the applicant's inventive compositions rely upon a different "system" of essential constituents which are necessary to form the encapsulated fragrance materials which are presently claimed. The applicant's "system" of essential constituents are quite different from those recited by McManus, as the applicant's system comprises: water, a fragrance material, a liquid-crystal forming material having at least one fatty alcohol having at least 22 carbons, and a reinforcing material. Thus, the claimed "system" according to application's invention is a different "system" of essential constituents as taught by McManus, and is thus not anticipated by McManus.

As the features of the presently amended claims are neither taught nor suggested by McManus, McManus cannot anticipate, or render obvious the claimed invention as presented in this paper. Accordingly, reconsideration of the propriety of the rejection and withdrawal of the instant rejection of the claims under 35 USC 102(b) is respectfully requested.

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With respect to the Examiner's rejection of claims 7 and 12, the applicant points out that these claims are dependent upon claim 1, which is now believed to be in condition for allowance. Accordingly, the rejection should be withdrawn.

With respect to the Examiner's rejection of claim 8, the applicant points out that these claims are dependent upon claim 1, which is now believed to be in condition for allowance. Accordingly, the rejection should be withdrawn.

With respect to the Examiner's rejection of claim 9, the applicant points out that these claims are dependent upon claim 1, which is now believed to be in condition for allowance. Accordingly, the rejection should be withdrawn.

With respect to the Examiner's rejection of claim 10, the applicant points out that these claims are dependent upon claim 1, which is now believed to be in condition for allowance. Accordingly, the rejection should be withdrawn.

With respect to the Examiner's rejection of claim 11, the applicant points out that these claims are dependent upon claim 1, which is now believed to be in condition for allowance. Accordingly, the rejection should be withdrawn.

With respect to the Examiner's rejection of claim 12, the applicant points out that these claims are dependent upon claim 1, which is now believed to be in condition for allowance. Furthermore the applicant traverses the Examiner's characterization that "... the composition as a skin moisturizing composition [...] a personal care product commonly found in the house (household product). The applicant points out that they have distinguished between "personal care product" as a first class of compositions, and "household products" as a second class of compositions. Applicant recites in their specification that:

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[0056] Fragrance compositions described above may be further mixed into household and personal care consumer product bases such as a laundry care or hair care conditioner base, a cleansing composition such as a liquid soap or a shower gel, a liquid detergent, a dishwashing product, a bleach or a hard surface cleaner base or a soap bar base. Such bases are well known in the art and need no further discussion here. Representative examples of such bases may be found in EP 0 466 235 A1 which is herein incorporated by reference.

A skilled artisan would recognize that there many products and compositions which may be simultaneously present in a house, but which are not suitable for or not directed for use as a "personal care" product, e.g., a dishwashing product, hard surface cleaner, etc. Thus the applicant's claim 12 is believed to further distinguish over McManus' compositions which are undeniably limited to certain "skin care moisturizing compositions" as McManus himself states (at page 2).

25 The present invention relates to improved skin care compositions in the form of LCGN emulsions, for example, creams and lotions. Use of the compositions of the present invention results in excellent moisturization coupled with improved absorbency and afterfeel aesthetics to the user.

The Examiner is reminded that it is well settled in the law that a patent application may be their own "lexicographer", see e.g., *Autogiro Co. of America vs. U.S.* 155 USPQ 697 (Ct.Cl., 1967) at pp 702, 707-708,. In view of the applicant's distinction between "personal care product" as a first class of compositions, and "household products" as a second class of compositions , and the further non-limiting exemplifications of each, the Examiner's rejection should be withdrawn.

The applicant further notes that McManus' compositions, if they are to meet his own definition of his invention which is "improved skin care compositions in the form of LCGN emulsions, for example, creams and lotions" which would provide "excellent moisturization coupled with

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improved absorbency and afterfeel esthetics" would inherently require the presence of at least one emollient constituent. This is supported by McManus' recitation (at page 3) of:

emollients, with oil phase emollients being preferred. Thus, in accordance with the present invention, the one or more cationic emulsifiers and the one or more low HLB co-emulsifiers which form the LCGN-based emulsion system can deliver one
5 or more cosmetically acceptable emollients to the user, resulting in a skin care product having improved moisturization, faster absorption into the skin, less greasiness, less waxiness, and fewer unpleasant aesthetic characteristics versus traditional compositions that are currently available. These attributes of the

Which conclusion is further supported by McManus' later recitation, at page 13 of his specification headed "Emollients" as a class of constituents which are recited well before the later recitation of further constituents which begins at page 15 under the heading "OPTIONAL INGREDIENTS". A review of his "Example 1" and "Example 2" compositions also recite emollients as necessary components of his compositions. Thus, it is illogical in view of the above to understand McManus to recite a "system" of constituents without also not including emollients, as absent emollients his "system" would not provided the recited benefits of improved skin care features as McManus recites at page 3. Thus, McManus' compositions are properly seen by a skilled artisan reviewing his specification as necessarily including an emollient, while in contrast, a fragrance composition would only be optionally included, and if so, would necessarily be present with an emollient. Such however are not requirements of the applicant's claimed invention, which are not limited to skin treatment compositions, but rather are to fragrance compositions which find a variety of subsequent uses in a variety of products including their use in "personal care products" and in "household products", and would function in such applications even in the absence of an emollient. Thus, at best McManus' compositions are relevant only to topically applied "creams and lotions" which would provide "excellent moisturization coupled with improved absorbency and afterfeel esthetics" and would not extend to other types of products, including particularly "household products". Again, the Examiner's rejection should be withdrawn.

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The applicant also strongly traverses the Examiner's statement in the Office Action that "(2) it would be the Examiner's position that the application contains inadequate disclosure that there is no teaching how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions." The applicant points out that the applicant's specification recites (i) suitable constituents, (ii) at least one suitable process and (iii) exemplifies the end products which may be obtained from (i) and (ii). Furthermore the applicant's specification provides several specific examples of suitable processes and products made by said processes which are ample guidance for a skilled practitioner to practice the full meets and bounds of applicant's claimed invention, and in satisfactory compliance of the requirements of 35 USC §112.

Withdrawal of all outstanding grounds of rejection, and the early issuance of a *Notice of Allowability* is solicited.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

PETITION FOR A ONE-MONTH EXTENSION OF TIME

The applicant respectfully petitions for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this Petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

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Respectfully Submitted;

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Enclosure – Request for Continued Examination

CERTIFICATE OF TELEFAX TRANSMISSION UNDER 37 CFR 1.8

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Allyson Ross
Allyson Ross

June 3, 2010
Date

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